

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MICHAEL DOPPS,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. RED-02-0044

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the Department of Transportation, Maintenance Building, 1707 C. Street, Port Angeles, Washington, on March 2, 2004.

1.2 **Appearances.** Appellant Michael Dopps did not appear and no representative appeared on his behalf. Elizabeth Delay Brown, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of reduction in pay for neglect of duty, insubordination and willful violation of policy for failing to report to work and failing to notify the department of his absence on June 8, 2002.

II. FINDINGS OF FACT

2.1 Appellant Michael Dopps was a Correctional Officer 2 and permanent employee for Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on September 19, 2002.

2.2 Appellant was employed at the Clallam Bay Corrections Center. Appellant has a long history of failing to report his absences and/or tardy arrivals to work, and his personnel file reflects the following:

- A letter of reprimand dated January 7, 2002 regarding Appellant's failure to report to work and failure to notify the facility of his absence.
- A letter of reprimand dated May 4, 2000 following his tardy arrival on two separate shifts and his failure to notify the shift sergeant at least two hours prior to the start of his shift.
- A letter of reprimand dated July 12, 1999 for his tardy arrival and failure to notify his shift sergeant at least two hours prior to the start of his shift.
- A letter of reprimand dated October 23, 1998 for failing to report to work and failing to notify his shift supervisor at least two hours prior to the start of his shift.

2.3 The Department of Corrections has adopted Policy 830.150, which addresses unscheduled leave and requires employees "who are going to be absent from work, for any reason, to notify their supervisor or individual at the designated reporting location prior to the absence and provide the reason for such absence." On September 13, 1993, Appellant signed the above personnel policy and acknowledged his understanding of the policy requirements.

2.4 Sergeant Bradley Hatt supervised correctional staff working in the armed towers, and he was Appellant's supervisor when he issued Appellant the letter of reprimand dated January 7, 2002 following Appellant's "no call, no show" on January 1, 2002. At that time, Sergeant Hatt reminded

1 Appellant of his responsibility to notify him of any unscheduled absences prior to the absence, to
2 provide the reason for the absence, and he warned Appellant that future instances of “no calls, no
3 shows” could result in further discipline.

4
5 2.5 On Saturday, June 8, 2002, Appellant was scheduled to begin work at 6 a.m. Correctional
6 Captain Edward Reetz was the shift sergeant on June 8. Captain Reetz credibly testified that
7 Appellant did not report to work. Furthermore, Captain Reetz did not receive any notification from
8 Appellant prior to the beginning of his scheduled 6 a.m. shift nor did Appellant contact Captain
9 Reetz at anytime after the shift began to report his absence. Captain Reetz called Appellant’s home
10 to conduct a welfare check. However, Captain Reetz was unable to make contact with Appellant,
11 and he left Appellant a recorded message. Appellant never responded to Captain Reetz. On June
12 11, 2002, an Employee Conduct Report was initiated against Appellant and a subsequent
13 investigation ensued.

14
15 2.6 Captain Reetz provided credible testimony regarding the ramifications of a “no call, no
16 show” on the institution, including the negative impact on employees who are required to work
17 double shifts if a volunteer cannot be located and the cost to the facility in overtime pay.

18
19 2.7 Sandra Carter, Superintendent of Clallam Bay Corrections Center, received the results of the
20 investigation into Appellant’s June 8, 2002, “no show/no call.” Superintendent Carter scheduled a
21 meeting with Appellant to discuss the allegation, and Appellant appeared with his union
22 representative. Appellant admitted to the “no call, no show.” Superintendent Carter ultimately
23 concluded that Appellant engaged in misconduct. Superintendent Carter reviewed Appellant’s
24 employment file, and she determined that imposing a reduction in pay, rather than another letter of
25 reprimand, was the sanction appropriate due to the repeated nature of Appellant’s misconduct.

1 Superintendent Carter considered a harsher discipline, but she settled on a reduction in pay because
2 it was the first formal disciplinary action taken against Appellant.

3
4 2.8 By letter dated August 1, 2002, Superintendent Carter notified Appellant of his reduction for
5 neglect of duty, insubordination and willful violation of policy. Respondent alleges that on June 8,
6 2002, Appellant failed to report to work for his regularly scheduled shift and failed to notify the
7 facility of his absence. Appellant's salary was reduced from range 40, step K, to range 40, step I,
8 effective September 1, 2002 through November 31, 2002.

9 10 **III. ARGUMENTS OF THE PARTIES**

11 3.1 Respondent argues that Appellant admitted to the "no call, no show," and that his failure to
12 report the unscheduled absence was a neglect of his duty, a violation of agency policy, and
13 constitutes insubordination. Respondent argues that Appellant's misconduct had a negative impact
14 on the institution, that prior corrective action was ineffective, and that the next step was a
15 disciplinary action. Respondent argues that the reduction in pay was the most appropriate action in
16 light of Appellant's history of "no call no show."

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18 3.2 Appellant did not appear and no representative appeared on his behalf.

19 20 **IV. CONCLUSIONS OF LAW**

21 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

22
23 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
24 the charges upon which the action was initiated by proving by a preponderance of the credible
25 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
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1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
2 Corrections, PAB No. D82-084 (1983).

3
4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
5 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
6 of Social & Health Services, PAB No. D86-119 (1987).

7
8 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
9 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
10 Dep't of Social & Health Services, PAB No. D94-025 (1995).

11
12 4.5 Willful violation of published employing agency or institution or Personnel Resources
13 Board rules or regulations is established by facts showing the existence and publication of the rules
14 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
15 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

16
17 4.6 Respondent has established that Appellant was aware of his duty to report to work, or if
18 unable to do so, to notify the institution at least two hours prior to the start of his shift.
19 Furthermore, Respondent has also proven that Appellant was aware of DOC's policy regarding
20 leave and unscheduled absences and had been repeatedly instructed through the letters of reprimand
21 to comply with the policy by reporting any unscheduled absences. On June 8, 2002, Appellant
22 failed to report to work and he failed to call in his absence. Therefore, Respondent has met its
23 burden of proving that Appellant engaged in misconduct and that his misconduct constitutes a
24 neglect of duty, insubordination and willful violation of agency DOC Policy 830.100.

1 4.7 Although it is not appropriate to initiate discipline based on prior formal and informal
2 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
3 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
4 D93-163 (1995).

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6 4.8 Under the facts and circumstances, Respondent has proven that the reduction in salary was
7 the appropriate sanction. Therefore, the appeal of Michael Dopps should be denied.

8
9 **V. ORDER**

10 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Michael Dopps is denied.

11
12 DATED this _____ day of _____, 2004.

13
14 WASHINGTON STATE PERSONNEL APPEALS BOARD

15
16 _____
17 Walter T. Hubbard, Chair

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19 _____
20 Gerald L. Morgen, Vice Chair